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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

MARK MORRISON, an individual;

Plaintiff,

vs.

ULI ZANGPO, an individual;

Defendants.

) **Case No: 3:08-CV-1945-EMC**

)
) **PLAINTIFF'S OPPOSITION TO**
) **DEFENDANT'S MOTION TO**
) **DISMISS FOR LACK OF**
) **JURISDICTION; MEMORANDUM OF**
) **POINTS AND AUTHORITIES;**
) **DECLARATION OF MARK**
) **MORRISON; DECLARATION OF**
) **MATTHEW KURILICH**

) Date: September 10, 2008

) Time: 10:30 a.m.

) Courtroom: C, 15th FLR
)

Plaintiff, MARK MORRISON, hereby objects to defendant's motion to dismiss for lack of jurisdiction as follows:

MEMORANDUM OF POINTS AND AUTHORITIES

Statement of Issues

The essential issue presented in this case is whether plaintiff, upon moving to Washington, intended to remain there indefinitely?

Statement of Facts

Plaintiff filed a complaint on April 11, 2008 with an answer due on May 14, 2008. Plaintiff's attorney, Matthew Kurilich (Kurilich), received a phone call from defendant's counsel, Neil Bloomfield (Bloomfield), on May 12, 2008 asking for a 28-day extension to answer the complaint on June 11, 2008 as Bloomfield stated he had yet to meet with his client and he needed time to answer the detailed complaint. Declaration of Matthew Kurilich. Kurilich granted the extension. *Id.* On June 9, 2008, Kurilich received a letter from defendant's counsel, Bloomfield, requesting mediation and binding arbitration. *Id.* On June 10, 2008, Kurilich called Bloomfield and had a brief conversation where Kurilich granted a second extension to file an answer and further agreed that Kurilich would draft and deliver a proposed stipulation for binding arbitration, which was completed and delivered via email on June 11, 2008 at 1:46 p.m. *Id.* Kurilich and Bloomfield did not discuss the motion to dismiss or the motion to stay. *Id.* Had Bloomfield stated his intention to file either motion, we would have given him the declaration of Mark Morrison regarding his intention to stay in Washington indefinitely, and we had already agreed to binding arbitration making the second motion moot.

On June 11, 2008 at 5:22 p.m., Bloomfield filed a motion to dismiss for lack of jurisdiction and at 5:45 p.m. he filed a motion to stay proceedings and discovery pending mandatory arbitration.

Plaintiff is a Citizen of Washington

"The district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of \$75,000, and is between: citizens of different States."

28 U.S.C. §1332. Diversity of citizenship requires that all parties to the action be “citizens” of different states. *Id.* To establish citizenship for diversity purposes, a natural person must be both (a) a citizen of the U.S. and (b) a domiciliary of one particular state. *Kantor v. Wellesly Galleries, Ltd.*, 704 F.2d 1088, 1090 (9th Cir. 1983); *Coury v. Prot*, 85 F.3d 244, 249-250 (5th Cir. 1996).

For diversity purposes, a person is a “citizen” of the state in which he or she is domiciled. Since the issue is one of federal jurisdiction, the question of where a person is domiciled is determined by federal law. *Kantor*, 704 F.2d at 1090. As with other jurisdictional determinations, the court looks to the parties’ domicile at the time the lawsuit was filed. *LeBlanc v. Cleveland*, 248 F.3d 95, 100 (2nd Cir. 2001). A person’s domicile is the place he or she resides with the intention to remain. *Kanter v. Warner-Lambert Co.*, 265 F.3d 853, 857 (9th Cir. 2001). A person legally capable of selecting his or her own domicile does so by establishing (i) some physical presence in a new location (ii) with intent to remain indefinitely. *Lew v. Moss*, 797 F.2d 747, 750 (9th Cir. 1986); REST.2D CONFLICTS, §18. *Gilbert v. David*, 235 US 561, 569 (1915); *McDonald v. Equitable Life Ins. Co. of Iowa*, 13 F.Supp.2d. 1279, 1281 (M.D. Ala. 1998).

If the requisite intent exists, a person acquires a new domicile immediately upon arriving at the new location, *Walls v. Ahmed*, 832 F.Supp. 940, 941 (E.D. P.A. 1993); REST.2D CONFLICTS, §16, and intent is gauged by various objective factors: e.g., length of residence, employment, location of assets, voting registration, address shown on driver’s license, payment of state taxes, etc. *Altimore v. Mt.Mercy College*, 420 F.3d 763, 768-769 (8th Cir. 2005); *Acridge v. Evangelical Lutheran Good Samaritan Soc.*, 334 F.3d 444, 448 (5th Cir. 2003). The objective facts show that Plaintiff has lived—and intended to remain indefinitely—in the State of Washington since August 2007, i.e., approximately 8 months before the Complaint was filed.

Plaintiff moved from San Anselmo, California to Detroit, Oregon in August 2006, but returned to Fairfax, California November 2006 to ensure the completion of the California

1 property construction that is at issue in this Complaint.¹ Declaration of Mark Morrison. After
2 that construction was essentially complete, Plaintiff moved his family to Langley, Washington in
3 August 2007 to begin the school year, where he is bound to a two-year lease agreement for a
4 single-family residence. *Id.*

5 Plaintiff's wife and three young children moved with him and currently reside with him
6 in Washington. *Id.* The children have been enrolled at the Whidbey Island Waldorf School
7 since August 2007 and are signed up for the 2008-2009 school year. *Id.* Plaintiff is a member of
8 the board of the Whidbey Island Waldorf School. *Id.* Plaintiff and his family have established
9 many active social relationships in Washington. *Id.* Plaintiff has a verbal understanding to
10 purchase real property as his primary residence in Washington, and is waiting on an application
11 for the abandonment of a county road easement to process before closing escrow. *Id.* Plaintiff
12 has established a relationship with a licensed Washington real estate broker and is actively
13 looking for investment real estate in Washington. *Id.*

14 Plaintiff is a registered Washington voter and attended the local Island County caucus on
15 behalf of Barrack Obama. *Id.* Plaintiff has a Washington Driver's license. *Id.* Plaintiff did not
16 attach a copy of his driver's license due to the fact that defendant, Uli Zangpo, made a death
17 threat against Plaintiff's life and does not want defendant to know where he lives. *Id.* Plaintiff
18 has a Washington doctor and dentist. *Id.* Plaintiff has a vehicle registered in California, Oregon
19 and Washington.² *Id.* Plaintiff opened new personal and business bank accounts in Washington
20 and has maintained a California business account primarily for cost effective online banking. *Id.*
21 Plaintiff has various credit cards issued from various institutions located in various states with all
22 registered to Plaintiff's mailing address in Washington. *Id.* Plaintiff's primary mailing address

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24 ¹ That California property was an investment property purchased through a 1031
25 exchange.

1 is Washington. *Id.* Plaintiff has insurance agents in California, Oregon and Washington. *Id.*
2 Plaintiff does not have a stockbroker, but does have a small IRA with a California broker and a
3 brokerage account in Washington. *Id.* Plaintiff has maintained a personal and business
4 relationship with his California accountant for approximately 11 years and continues to use the
5 same accountant. *Id.*

6 Plaintiff maintains a broad-based law practice, with cases currently filed in Indiana State
7 Court and United States District Court Northern District of Indiana (consumer class action),
8 United States District Court Central District of California (F.L.S.A. case) and recently settled a
9 case slated for trial in the United States District Court Middle District of Florida (A.D.A. case).
10 *Id.* Plaintiff's California Bar license mailing address is in Washington. Plaintiff intends to sit
11 for the Washington Bar. *Id.* Plaintiff uses his Washington address for all current business
12 relations, but maintained a California mailbox service to accommodate his transition to
13 Washington from California. *Id.* The service will soon expire. *Id.*

14 In short, Plaintiff moved his family and himself to Washington with the intention of
15 making Washington his primary residence indefinitely in August 2007. The Complaint was filed
16 on April 11, 2008. This Court has jurisdiction.

17 **CONCLUSION**

18 The Court should deny the motion to dismiss for lack of diversity jurisdiction.
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25 ² Plaintiff is in the process of transferring the California vehicle. Plaintiff owns a cabin in Oregon and has a truck registered in that state. Plaintiff's primary vehicle is a Honda Odyssey registered in Washington.

1 Dated: 6-20-08

Respectfully submitted,

2 MATT KURILICH ATTORNEY AT LAW

3
4 By: /s/Matt Kurilich

5 Matt Kurilich,
Attorney for Plaintiff

6 *Co-Counsel*

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